APPENDIX

Monday, March 23, 1959

SUPREME COURT OF LOUISIANA

No. 44258

STATE OF LOUISIANA

VERSUS

DALTON HOWARD

APPEAL FROM THE FIFTEENTH JUDICIAL DISTRICT COURT, PARISH OF LAFAYETTE; THE HONORABLE A. WILMOT DALFERES, JUDGE

HAWTHORNE, J.

Appellant Dalton Howard, charged in a bill of information with the crime of public bribery denounced by R. S. 14:118, was tried, convicted, and sentenced to serve four years in the state penitentiary.

. . . . . .

(Court holds bill of information to be sufficiently informative and definite.)

Appellant further contends that there is an error patent on the face of the record which is fatal to his conviction—that is, that he was not afforded effective assistance of counsel and consequently was denied due process of law.

The transcript in this case discloses that this appellant, a police officer of the City of Lafayette, was charged in a bill of information with public bribery. He was duly arraigned on Friday, February 14, 1958, and at this arraignment he was represented by counsel who, we understand, is the same attorney who represents him on the appeal to this court. At this arraignment his case was fixed for trial for May 5, 1958. On Tuesday, April 8, this bill of information was nolprossed, and on the same day he was arraigned under a new bill charging the same offense.

Under this bill his case was again fixed for May 5, 1958, the same day originally set under the bill which had been nolprossed. The minutes of the court disclose that at this last arraignment he was unrepresented by counsel. However, the court entered an order permitting this accused to file any pleadings that he might desire until April 28. When the case was called for trial on May 7, the accused requested the court to appoint counsel to represent him, and accordingly the court at that time appointed Mr. Harold Savoie, who accepted the appointment. The case then proceeded to trial, which lasted two days. During the course of the trial counsel objected to the introduction of certain evidence relied upon by the State, reserved and perfected bills of exception, filed a motion for a new trial, and perfected an appeal to this court. After the appeal was lodged in this court, present counsel filed a motion setting forth that the convicted appellant had engaged him to represent him in these proceedings and requesting that he be enrolled as counsel for the appellant. This motion was granted.

From these facts it will be seen that Mr. Savoie was appointed by the court on the day the case was called for trial. Appellant argues that it was error for the trial court to assign him counsel at such a time and under such circumstances as to preclude counsel's giving effective aid to him in the preparation and trial of the case, and that as a result he was, in effect, deprived of the right to counsel and denied due process of law. In support of this contention he relies principally on the case of Powell v. Alabama, 287 U. S. 45, 53 S. Ct. 55, 77 L. Ed. 158.

Before discussing the Powell case we should point out that Article 1, Section 9, of the Constitution of this state provides that in all criminal prosecutions the accused shall have the right to have the assistance of counsel, and that R. S. 15:143 states that "Whenever an accused charged with a felony shall make affidavit that he is unable to procure or employ counsel learned in the law, the

court before whom he shall be tried, or some judge thereof, shall immediately assign to him such counsel". We further recognize that, to make the constitutional right to assistance of counsel effective, counsel must be accorded a reasonable time for preparation of the case—that is, time to investigate the facts and the law applicable. However, what constitutes a reasonable time depends on the facts and circumstances of each case, and there should be a showing that such time was needed, requested, and denied.

Counsel appointed by the court in the instant case did not request a continuance for time to prepare the accused's defense. If such a motion had been filed, there is no doubt that upon a showing that time was needed to investigate the facts and the law applicable the trial judge would have granted the motion. There is no showing whatever that counsel appointed by the court was derelict in his duty in any way, or that he was incompetent, not qualified, or lacking in ability, or that he needed additional time in which to prepare the defense. Moreover, there is no showing here that the accused was denied the right to file any pleas on the ground that they were not timely. Certainly it cannot be said that he was denied the right to have the assistance of counsel. The judge appointed counsel to represent the accused as soon as the accused informed the judge that he desired to have the court appoint counsel to represent him, even though there was no showing that the accused was unable to procure or employ counsel.

Powell v. Alabama, supra, relied upon by appellant is not controlling here. The United States Supreme Court in that case was careful to state that, under all the facts and circumstances there shown to exist, the failure of the trial court to give the defendants a reasonable time and opportunity to secure counsel was a clear denial of due process. Certainly appellant in the instant case had a reasonable time and opportunity to secure counsel of his choice.

In the Powell case the court also was careful to point out "that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law", and that, under the facts and circumstances detailed by the court in that case, the duty to assign counsel is not discharged by an assignment at such a time and under such circumstances as to preclude counsel's giving effective aid in the preparation and trial of the case. In other words, the Supreme Court held that under the facts and circumstances of that case defendants had been denied due process, but the court was careful to point out that "Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine". See Betts v. Brady, 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595, in which the decision in Powell v. Alabama was explained and discussed.

The facts and circumstances of the instant case do not bring it within the ruling of the Powell case.

. . . . . .

(Court holds defendant's statement need not be in exact words, but sufficient of "substance" of answers is set forth. Admission in evidence held proper).

During the trial of the case the defense called the chief deputy clerk of court and had her identify a record in a criminal case on the court's docket in which several named individuals including the defendant Dalton Howard were charged with simple burglary. After she identified the record she was asked: "What disposition was made of the charge lodged therein as far as the accused is concerned, Dalton Howard?" The State objected to this question as being immaterial and irrelevant, and the objection was sustained.

It is appellant's contention that the ruling of the trial judge sustaining this objection by the State was reversible error. We are unable to ascertain how the disposition of a former charge of simple burglary against this accused would be relevant in a trial on a charge of public bribery. Under Article 441 of the Code of Criminal Procedure, R. S. 15:441, evidence tending to negative the commission of the offense and the intent is admissible. But how the disposition of a burglary charge against ths accused would tend to negative the commission of the offense of public bribery here charged we are unable to say. The bill of exception does not disclose how this matter is relevant, and under these circumstances we consider the ruling of the trial judge correct.

The conviction and sentence are affirmed.

Motion for Rehearing

Filed April 6, 1959

SUPREME COURT OF THE STATE OF LOUISIANA

Docket Number 44258

STATE OF LOUISIANA

vs.

DALTON HOWARD

TO THE HONORABLE THE SUPREME COURT OF THE STATE OF LOUISIANA:

The petition of DALTON HOWARD defendant and appellant herein, respectfully represents that:

I.

The opinion and decree rendered in this cause on the 23rd day of March, 1959, are erroneous and contrary to the law and evidence, and prejudicial to the rights of your petitioner herein and a rehearing should be granted in this matter for the following reasons, to-wit:

Assignment of Errors

1. It was error for the court to hold that the accused was given effective assistance of counsel, where counsel was appointed to represent the accused only a few minutes before trial. *Powell* vs. *Alabama*, 287 U. S. 45, 53 Sp. Ct. 55, 77 L. Ed. 158.

2. It was error for the court to hold that the accused was given effective assistance of counsel, where the appointment of said counsel was made at a time and point in the proceedings where said counsel was barred from filing objections to the indictment, e.g. demurrers, motion to quash, plea of former jeopardy, bills of particulars, etc. *Reese* vs. *State of Georgia*, 350 U. S. 85, 76 Sp. Ct. 167; *Jones* vs. *Commonwealth of Kentucky*, 97 Fed. 2d 335.

3. It was error for the court to hold that a "reasonable time" referable to the appointment of counsel as mentioned by the United States Supreme Court in the *Powell* and *Reese* cases, *supra*, depends on a "showing that such time was needed, requested, and denied".

4. It was error for the court to hold that the accused was not denied of due process, where his conviction was procured by the use of the same evidence, acts and facts necessary to and used in the previous trial of the accused prosecuted in the same court under the charge of simple burglary, for which accused was promptly and duly acquitted.

5. It was error for the court to hold that the accused, under the circumstances of this case, was not entitled to a new trial.

Undisputed Salient Facts

a) On the 20th day of September, 1957, the accused, Dalton Howard, a man of color, was charged with the crime of simple burglary in the Fifteenth Judicial District Court, Parish of Lafayette, Louisiana, which cause is

styled, *State of Louisiana* vs. *Floyd Joseph Andrews*, alias *James Lewis, Norris Gabriel, Wilfred Elias, Sr., Paul Lewis, Dalton Howard* and *Hammond Mitchell*, Criminal Docket Number 12004, reading in substance as follows:

> "The Grand Jurors of the State of Louisiana duly empanelled, sworn and charged to inquire within and for the Parish of Lafayette, State aforesaid, upon their oath do present that Floyd Joseph Andrews, alias James Lewis, Norris Gabriel, Wilfred Elias, Sr., Paul Lewis, Dalton Howard and Hammond Mitchell at the Parish of Lafayette, on or about the 11th day of April, in the year of our Lord, One Thousand Nine Hundred and Fifty-seven, within the Fifteenth Judicial District Court of Louisiana, committed simple burglary of a building and structure known as the Fil-A-Sac located on U. S. Highway 169 and Arnaud Street belonging to Dr. Paul J. Azar and leased to Eddie Hoornstra, contrary to the form of the Statute of the State of Louisiana, in such cases made and provided and against the peace and dignity of the same. Signed Bertrand DeBlanc, District Attorney, Fifteenth Judicial District Court of Louisiana."

b) On April 17, 1957, the accused was closeted in a small room with Four officers and through the alleged procedure of a series of questions and answers there was allegedly extracted from him what has been recorded in longhand and described as the substance of his answers and used by the State as an alleged confession.

c) The theory of the prosecution of the accused at bar, jointly with the other accused mentioned in the Bill of Indictment, was that the accused being a colored police officer of the City of Lafayette, Louisiana, had aided and abetted the commission of the crime of simple burglary and thus was a principal within the meaning of the provisions of LSA-R. S. 14:24.[1]

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[1] LSA-R. S. 14:24 "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals."

d) On December 12, 1957, the accused was brought to trial and duly tried for the offense of simple burglary, therein represented by undersigned counsel and after trial, which lasted approximately four days, the jury went into deliberation and within twenty minutes, returned a verdict of "not guilty".

e) During the course of said trial the State produced the alleged confession complained of herein purportedly made by the accused over the objection of the defense and called approximately seventeen witnesses in its effort to attempt to prove the guilt of the accused and set out in full all of the facts and circumstances necessary to the conviction of the accused, including the fact that the accused was then a duly sworn colored Police Officer of the City Police of Lafayette, Louisiana, and in that capacity had aided and abetted the commission of the alleged crime and therefore was a principal within the meaning of law of Louisiana, but failed to convince the jury of the truthfulness of the State's contention.

f) The State, acting through the District Attorney, having failed to convict the accused of the crime of simple burglary, on April 3, 1958, just eight days before the prescriptive date, or statute of limitation period, filed a Bill of Information against the accused, charging the accused with the crime of public bribery, which is involved in the action at bar, as shown by a certified copy of said Bill of Information marked Exhibit D-2 and attached hereto.

g) That said charge above mentioned, was predicated upon the same facts and circumstances that formed the basis of the simple burglary charge, for which the accused was indicted and duly acquitted.

h) On April 8, 1958, the accused was arraigned on the charge of public bribery and pleaded not guilty, at which time he was unrepresented by counsel.

i) His case was fixed for trial for May 5, 1958, at 9:00 a. m.

j) On May 5, 1958, the accused again appeared in open court in proper person and on the motion of the District Attorney his case was fixed for trial for the following day, May 6, 1958, as shown by the minutes of the court of May 7, 1958.

k) Just a few minutes before the commencement of his trial the court, being informed that the accused could not pay for private counsel, appointed Mr. Harold L. Savoie, member of the Lafayette Bar Association, State of Louisiana, to represent said defendant.

l) That said court appointed attorney had no previous knowledge of the facts of this case, did not want the appointment and was unprepared to defend the accused. Furthermore, no opportunity whatever was given to the court appointed attorney to investigate the facts of the case or to prepare the defense of the accused. (See Exhibit D-3).

m) A jury was duly selected and at 1:30 P. M. of that date evidence was taken until 5:45 P. M., at which time court was adjourned until the following day at 9:00 A. M.

n) At approximately 10:45 A. M. of the following day both the State and the accused rested their respective cases.

o) The jury went into deliberation at 5:05 P. M. and at approximately 5:30 P. M. returned with a verdict of "guilty as charged".

p) That all of the evidence used in the prosecution of the accused and necessary to the conviction of the accused on the charge of simple burglary, for which the accused had been theretofore acquitted, was used and necessary to the prosecution of the accused under the charge of public bribery. (See Exhibit D-4).

q) Furthermore, not one witness was called to testify on behalf of the defendant during the trial of the case

at bar, because the court appointed attorney had not sufficient time to prepare himself and to be informed of the availability of said witnesses; and contrariwise, said defendant had called witnesses to testify on his behalf during his trial for simple burglary, which witnesses were still available to testify in connection with the public bribery charge against the accused.

r) The appointment of counsel was made at a time and point in the proceedings where no objection to the indictment could be made, nor was opportunity available to file a plea of former jeopardy.[2]

II

Under the facts of this case it is apparent that the accused has been acquitted in a previous trial for the misconduct or alleged misconduct for which he has been convicted in the case at bar; that the evidence used and necessary to his attempted conviction on the previous trial was the same as the evidence used and necessary to the prosecution of the accused in the case at bar and under such circumstances by the prosecution at bar the accused has been twice placed in jeopardy contrary to his constitutional rights; that accordingly, the accused herein should be granted a rehearing if for no other reason than to remand this cause to the District Court for the purpose

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[2] LSA-R. S. 15:284 "Every objection to any indictment shall be taken by demurrer or by motion to quash such indictment, *before the arraignment;* and every court before which any such objection shall be taken for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, and thereupon the trial shall proceed as if no defect had appeared."

LSA-R. S. 15:281 "The plea of former acquittal or of former conviction shall be urged, tried and disposed of before trial on the plea of guilty."

Counsel was appointed by the court on the date of trial, to-wit May 7, 1958. Accused had been arraigned on April 8, 1958, hence the time to file objections to the indictment had expired.

there to permit the accused to produce evidence proving that the prosecution at bar constitutes double jeopardy.

WHEREFORE, premises considered, petitioner prays that, after due consideration, a rehearing be granted in this cause, and that, finally, the conviction of the accused be reversed and set aside.

In the alternative petitioner prays that a rehearing be granted herein for the purpose of ordering a remand of these proceedings to the District Court in order thereby to enable petitioner to produce evidence tending to prove that he has been acquitted heretofore for the same substantive offense for which he now stands convicted.

AND FOR ALL GENERAL AND EQUITABLE RELIEF.

BY COUNSEL:
s J. MINOS SIMON

STATE OF LOUISIANA,
PARISH OF LAFAYETTE,

J. MINOS SIMON, being first duly sworn did depose and say that he is of counsel in the foregoing petition and that all the allegations of fact therein contained are true and correct to the best of his knowledge, information and belief.

/s/ J. MINOS SIMON

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS 2ND DAY OF APRIL, 1959, AT LAFAYETTE, LOUISIANA.

WILSEN SIMON,
Notary Public

Exhibit D-1

STATE OF LOUISIANA,
PARISH OF LAFAYETTE,

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF LOUISIANA:

The Grand Jurors of the State of Louisiana, duly empaneled, sworn and charged to enquire within and for the Parish of Lafayette, State aforesaid, upon their oath do present THAT Floyd Joseph Andrews, alias James Lewis, Norris Gabriel, Wilfred Elias, Sr., Paul Lewis, Dalton Howard and Hammond Mitchell at the Parish of Lafayette, on or about the 11th day of April, in the year of our Lord, One Thousand nine hundred and fifty-seven (A. D. 1957) within the Fifteenth (15th) Judicial District of Louisiana, Committed simple burglary of a building and structure known as the Fil-A-Sak located on U. S. Highway 167 and Arnaud Street belonging to Dr. Paul J. Azar and leased to Eddie Hoornstra, contrary to the form of the Statute of the State of Louisiana, in such cases made and provided and against the peace and dignity of the same.

s/ BERTRAND DEBLANC
District Attorney, Fifteenth
Judicial District of Louisiana

Exhibit D-2

STATE OF LOUISIANA,
PARISH OF LAFAYETTE,

BE IT REMEMBERED, That on the 3rd day of April A. D., 1958 Bertrand DeBlanc, District Attorney of the Fifteenth Judicial District of the State of Louisiana, prosecuted in said capacity, for and in the name and by the authority of said State within and for the district aforesaid, in his own proper person comes into the Court of said District at the regular term thereof for the year A. D., 1958 holden in and for the parish of Lafayette and here gives the Court to understand and be informed that Dalton Howard and Paul Lewis at the Parish of Lafayette on or about the 11th day of April in the year of our Lord, one thousand nine hundred and Fifty-seven (1957) being employed as patrolmen of the City Police of the City of Lafayette, Louisiana, did accept Two Hundred Thirty and no 100

($230.00) Dollars in the lawful money of the United States, from James Lewis, Norris Gabriel and Hammond Mitchell which was given to the said Paul Lewis and Dalton Howard by the above named persons and accepted by the said Paul Lewis and Dalton Howard with the intent to influence their conduct in relation to their position, employment and duty as police officers thereby committing the crime of public bribery, contrary to the form of the Statute of the State of Louisiana; in such cases made and provided, and against the peace and dignity of the same.
Guilty as charge

s/ ARTHUR L. BOULET
Foreman

s/ BERTRAND DEBLANC
District Attorney, Fifteenth Judicial District of Louisiana

Exhibit D-3

STATE OF LOUISIANA,
PARISH OF LAFAYETTE,

BE IT KNOWN, That on this 1st day of April, A. D., 1959, before me, undersigned Notary Public duly commissioned and qualified as such, personally came and appeared HAROLD SAVOIE, who being by me first duly sworn, did depose and state:

That I am of full age of majority and a resident of Lafayette Parish, Louisiana; that since the month of July, 1955, I have been a duly licensed attorney of the State of Louisiana and have been practicing my profession in Lafayette Parish, Louisiana.

That on May 7, 1958, I made an appearance in the Courtroom of the Fifteenth Judicial District Court in and for the Parish of Lafayette, State of Louisiana, for the purpose of representing one of my clients charged with

the crime of aggravated battery; that my client's case had been fixed for trial for that date by the District Attorney of said Court; that there was fixed for trial for the same date the case of "State of Louisiana vs. Dalton Howard", which involved the criminal charge of public bribery.

While I was in court under those circumstances the State of Louisiana acting by and through the District Attorney, Honorable Bertrand DeBlanc, announced the State's readiness to proceed with the trial of the case of "State of Louisiana vs. Dalton Howard", whereupon the said Dalton Howard asked the Court to appoint an Attorney to represent him; the court announced its intention to appoint counsel to represent the said Dalton Howard and thereupon requested that I approach the bench.

Honorable A. Wilmot Dalferes, then presiding Judge, then asked me if I wanted to defend Dalton Howard and represent him during said trial; that I told the said presiding Judge that I did not care to do so but if the court so appointed me I felt I had no choice; thereupon, I was then appointed by the said presiding Judge who allowed me a few minutes to consult with Dalton Howard before proceeding with the trial. The trial was commenced within a few minutes thereafter and by 1:30 P. M. of said date the jury was empanelled and the taking of evidence commenced and continued until 5:45 P. M. at which time Court was adjourned until the following day at 9:00 A. M.; at approximately 10:45 A. M. of the following day both the State and the accused rested their case. The jury went into deliberation at 5:05 p. m. and at approximately 5:30 P. M. returned with a verdict of guilty as charged.

At the time that I was appointed as counsel for Dalton Howard and assumed the duties attendant thereunto, I had no knowledge of the facts and circumstances surrounding the alleged crime other than the fact that approximately one year previous thereto I secured a statement

from one Norris Gabriel, who was charged as a co-defendant of the said Dalton Howard on a previous charge of simple burglary, for which Dalton Howard had been duly acquitted, but this statement was taken from the said Norris Gabriel at the request of Mr. J. Minos Simon, Attorney at Law, Lafayette, Louisiana, who was then representing one Wilfred Elias, Sr., on whose behalf the statement was taken. To the best of my memory I never had talked to Dalton Howard specifically about his case at any time prior to the trial date. I do recall that I was present in court for approximately two hours during the previous trial of Dalton Howard, which trial lasted for approximately three days, but then I was a mere spectator.

The occasion of my defense of Dalton Howard was the first time in my professional career that I had alone conducted a jury trial. I was unable to ascertain any information that would lead me to know that there were any witnesses available to testify for the defendant in connection with his defense; however, since the conviction of the said Defendant Dalton Howard I have been informed that during his previous trial for simple burglary allegedly based upon the same evidence used in connection with the prosecution of Dalton Howard for the offense of public bribery, several witnesses were called and did give material evidence in connection with his defense to the said charge of simple burglary.

Further affiant sayeth not.

HAROLD L. SAVOIE

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS 2ND DAY OF APRIL, 1959, AT LAFAYETTE, LOUISIANA.

J. MINOS SIMON
Notary Public

Exhibit D-4

STATE OF LOUISIANA:
PARISH OF LAFAYETTE,

BE IT KNOWN, on this 31st day of MARCH, A. D., 1959, before me, the undersigned authority, personally came and appeared CAROLYN D. WALKER, a resident of Lafayette Parish, Louisiana, who, after being duly sworn, stated:

That I hereby state that I am the Chief Deputy Clerk of Court for the 15th Judicial District in and for the Parish of Lafayette, Louisiana, and have occupied that official position for approximately the last nine years; that I have in my custody and general supervision the official files of this Court, included in which is the file of the matter entitled "*State of Louisiana* vs. *Dalton Howard*".

I have inspected the files against the said *Dalton Howard* and do hereby state that he was originally charged on the 20th day of September, 1957, with the crime of Simple Burglary which cause is styled "*State of Louisiana* vs. *Floyd Joseph Andrews*, alias *James Lewis*, *Norris Gabriel*, *Wilfred Elias, Sr.*, *Paul Lewis*, *Dalton Howard* and *Hammond Mitchell*", Criminal Docket No. 12004, reading in substance as follows:

"STATE OF LOUISIANA,
PARISH OF LAFAYETTE

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF LOUISIANA:

The Grand Jurors of the State of Louisiana, duly empaneled, sworn and charged to enquire within and for the Parish of Lafayette, State aforesaid, upon their oath do present that Floyd Joseph Andrews, alias James Lewis, Norris Gabriel, Wilfred Elias, Sr., Paul Lewis, Dalton Howard and Hammond Mitchell, at the Parish of Lafayette, on or about the 11th day of April, in the year of

our Lord, One thousand nine hundred and fifty-seven (A. D. 1957) within the Fifteenth (15th) Judicial District of Louisiana, Committed simple burglary of a building and structure known as the Fil-A-Sak located on U. S. Highway 167 and Arnaud Street belonging to Dr. Paul J. Azar and leased to Eddie Hoornstra. Contrary to the form of the State of the State of Louisiana, in such cases made and provided and against the peace and dignity of the same.

s/ BERTRAND DEBLANC
District Attorney, Fifteenth
Judicial District of Louisiana"

That the said Dalton Howard was brought to trial and tried for said offense and was represented by counsel, J. Minos Simon; that said trial lasted approximately three days, after which the Jury went into their room of deliberation and after approximately twenty minutes, returned a verdict of "Not Guilty".

Subsequently thereto, and particularly on the 3rd day of April, 1958, the said Dalton Howard was again charged by Bill of Information, styled "State of Louisiana vs. Dalton Howard & Clifton Lewis", Criminal Docket No. 12386, whereby the said Dalton Howard was charged with the crime of Public Bribery, and was then unrepresented by counsel; that counsel was appointed for him by the Court on the date of the trial, namely, Harold Savoie was appointed. That the matter then went on trial on the 7th day of May, 1958, and continued approximately two days, through May 8th. That thereafter the Jury went into deliberation and within approximately twenty-five minutes returned a verdict of "Guilty as Charged".

I further state that I have attended both trials and according to the records, the same witnesses were called to both trials and both prosecutions involved the same identical factual transactions, and said trials were both based

on the same evidence; that the statement of the accused classified and admitted into evidence as a confession was used in both trials.

/s/ Carolyn D. Walker
Carolyn D. Walker

Sworn to and subscribed before me this 31st day of March, 1959.

/s/ J. Minos Simon
Notary Public

SUPREME COURT OF THE STATE OF LOUISIANA

Docket Number 44258

State of Louisiana

vs.

Dalton Howard

To the Honorable the Supreme Court of the State of Louisiana.

On motion of J. Minos Simon, Attorney for the defendant in the captioned matter and on suggesting to the court that the defendant desires to supplement his original application for rehearing by incorporating therein and making a part thereof the affidavit of the said defendant attached hereto and the affidavit of Felton Arceneaux, likewise attached hereto, praying leave of court therefor.

It Is Ordered that Dalton Howard be and he hereby is authorized to supplement his application for rehearing by filing said affidavits and the Clerk of this court is hereby directed to incorporate the same with his application for rehearing.

OFFICIALLY SIGNED on this day of April, 1959, at New Orleans, Louisiana.

Justice

Approved:

s/ J. MINOS SIMON
J. Minos Simon,
Attorney for Defendant

Affidavit

STATE OF LOUISIANA
PARISH OF LAFAYETTE

BE IT KNOWN, That on this 7th day of April, 1959, before me, undersigned Notary Public duly commissioned and qualified as such in and for the Parish and State aforesaid personally came and appeared DALTON HOWARD, who being by me first duly sworn did depose and say:

I am a man of color, aged 29 years, married, living and abiding with my wife and four children born of my said marriage at 205 12th Street, Lafayette, Louisiana. On or about the month of July, 1956, I was duly appointed and sworn as a Police Officer of the City of Lafayette, Louisiana, and thereupon commenced the discharge of my duties as such. Approximately one month subsequent to my said appointment as a City Officer I was assigned to the duties of patrolman operating under the supervision of Paul Lewis, who was placed in the general charge of all six colored police officers of the City of Lafayette, and continued in said capacity until the month of April, 1957.

On or about the morning of April 11, 1957 at approximately 1 o'clock A. M. I went off duty and went to my home which was then at 114 12th Street in the City of Lafayette, Louisiana. I went to bed with my wife shortly after my arrival at home and at approximately 3 o'clock

A. M. of said date, I was awakened by a telephone call from one Norris Gabriel who asked to borrow my automobile. I immediately told him "no" and hung up the telephone, believing that the said Norris Gabriel was under the influence of intoxicating beverages. I thereafter immediately returned to bed and went to sleep. At approximately 4 o'clock in the morning I was again awakened by a telephone call. The caller was Paul Lewis, the City Officer hereinabove mentioned. The said Paul Lewis instructed me to get dressed as he was coming to pick me up in the next few minutes. Within approximately ten minutes subsequent to said call Paul Lewis arrived at my residence in the official City Police car customarily used by both of us as a patrol car. At the time that he called I got the impression that I was needed on official business.

When Paul Lewis arrived at my house I met him outside. He was fully dressed in his police uniform. He instructed me to enter into the police car which I did. After driving about for a while he asked if I could borrow my brother-in-law's truck for and on his behalf in order to enable him to carry garbage to his pigs on his farm in the country which is located at his father's residence in the country. I told him I would talk to my brother-in-law about it and in the meantime Paul Lewis continued to drive the police car about town. He finally came to a stop at the intersection of Olivier and Washington Streets in Lafayette and picked up two other colored persons, saying that they were going to drive the truck for him to bring the garbage to his father's residence as herein aforesaid. Then we proceeded to my brother-in-law's house where I borrowed my brother-in-law's truck for the stated purpose. I delivered control of the vehicle to the two colored persons picked up by Paul Lewis and they immediately left in the truck. Paul Lewis advised that it would not take long to accomplish the mission, so I told him that I would wait in front of Lewis' house for the

truck because I personally wanted to return the truck since I had personally borrowed it and had not told my brother-in-law that someone else was to operate the truck.

Paul Lewis continued to patrol in the city police car alone while I waited. It soon became evident that Paul Lewis was patrolling merely around the block where I stood. Shortly thereafter I saw the truck as it approached me and it stopped next to me. I discovered a safe on the bed of the truck and immediately ordered the operator of the truck to remove the safe from the truck. At that time which was at about the same time when the truck arrived, Paul Lewis arrived in the police car and told the two other persons to drive on, which they did, leaving me standing alone on the street in question. I suspicioned something was going on that wasn't altogether proper so I immediately left, secured a cab, namely, Fuselier's Cab driven by one Ivy Smith, who returned me to my home. The said Ivy Smith so testified under oath during the course of the trial of the charge of burglary lodged against me and for which I was duly acquitted.

At approximately 7:30 in the morning I went in search of the truck. I was told by a pedestrian that my brother-in-law's truck was in the ditch located near the Paul Breaux School in the City of Lafayette. I immediately went to the site mentioned and there discovered the truck in a ditch. I had a passer-by use his vehicle to help me pull the truck out of the ditch. The truck had been abandoned. I got in the truck and tried to start it but in vain, since it was later determined that the motor of the truck had been burned. I asked the passer-by to pull my truck to the Hub City Motors in Lafayette, but he said he did have time because he was on his way to work. I then called Paul Lewis and told him of the situation and he came in his truck and pulled my brother-in-law's truck to Hub City Motors in the City of Lafayette, Louisiana. At that time I told Paul Lewis that they had ruined the motor of the truck and they would have to pay for it. He told me not

to worry about it, that they would pay for it. I then told my brother-in-law what had happened and that they had promised to pay for the damages. During the same day my brother-in-law told me that a mechanic had informed him that it would cost about $120.00 to repair the truck. I then related that to Paul Lewis.

At approximately 7 o'clock of the evening of April 12, 1957, one Hammond Mitchell, while I was visiting the home of a friend of mine, asked to borrow my car, which assented to. At approximately 9 o'clock that evening Hammond Mitchell had not returned and I got concerned about my car. I went to Paul Lewis' house and asked him to take me about in search of my car, which he did. A short time thereafter I saw my car in use and discovered that there was a safe in the trunk of my car. I instructed Mitchell to stop and when he did I told him to remove the safe from the trunk of my automobile. Paul Lewis interposed that the safe could not be removed on that street but I insisted that it be immediately removed. Paul Lewis instructed Mitchell to drive the car out of town and when the safe was removed from my car I immediately left in my car after protesting with Mitchell for having so used my vehicle. Mitchell testified under oath to the fact, which is the truth, that I was not informed of the use to which he intended to put my car when he borrowed it and that I knew nothing of the safe that was in the trunk of my car and this testimony was received in connection with the trial of simple burglary for which I was duly acquitted.

At approximately 2 o'clock on the morning of April 13, 1957 while I was on official duty in the patrol car with Paul Lewis He drove the patrol car to the front of a house designated as 608 Poydras Street in Lafayette, Louisiana. He left the car and instructed me to remain there to listen for any police radio calls and then he went inside of the said building. I remained about the area of the car within hearing distance of the radio equipment. Paul Lewis emerged from said house about one-half hour

later and we resumed our patroling duties. While so patrolling Paul Lewis gave me $120.00 telling me it was in payment of the damage to my brother-in-law's truck. After I got off duty that same morning at approximately 7 to 8 o'clock I went to my brother-in-law's house and gave him this money.

On or about the 14th day of April, 1957, I was arrested. I then learned that Paul Lewis had been arrested during the day of April 13, 1957. I was immediately brought to the City Jail and kept there for about 45 minutes after which I was transferred to the Parish Jail and there incarcerated. Approximately 2 hours after I was so incarcerated I was brought into a very narrow and small room of the approximate dimensions of 8 feet by 9 feet, which room was equipped with a desk, sofa, and three or four chairs. I was therein questioned simultaneously and alternately by the Sheriff, and three Deputies, which interrogation lasted for over an hour. I answered the questions that were asked to the best of my ability, protesting at all times my innocence and stating substantially what appears herein. While I was being questioned one Deputy, Charles Stutes, wrote in longhand on sheets of paper. After they had discontinued questioning me I was asked to sign several sheets of paper but not permitted to read the same. I requested permission to read the statement but I was told that one of the Deputies would read it to me. One of the deputies proceeded to read to me but in such a way as to make most of what he said inaudible and thereafter placed me in jail. After I secured an attorney to represent me I then had the first occasion to read the statement and denounced it for not being correct or what I said and I have so testified in connection with my trial for simple burglary for which I was acquitted. At the time of the interrogation I was suffering under a sense of extreme fear as I was shouted at from all directions and in spite of my protestations I was repeatedly accused of this offense of simple burglary and was repeatedly told

that things would be easier for me if I confessed. While I protested my innocence I was more than anxious to disengage myself from these circumstances.

On December 12, 1957, the trial for simple burglary commenced and ended on December 17, 1957 with a verdict of not guilty. Thereafter on April 3, 1958 the District Attorney filed a Bill of Information against me charging me with public bribery the basis of which consisted of the same facts and testified to by the same witnesses as were brought out during my trial for simple burglary, save and except that none of my witnesses who had previously testified were called to testify in my behalf. At the time of my arraignment and trial for public bribery I no longer had sufficient funds to pay for private counsel and as a matter of fact, at that time I had not fully paid my attorney for his services during my trial for simple burglary. The court appointed an attorney to defend me on the morning of my trial. Trial was immediately proceeded with and within two days thereafter a verdict of guilty as charged was rendered against me from which I have made an appeal.

I further certify that in addition thereto the said District Attorney on February 14, 1958 filed a charge of receiving stolen things against me based upon the same facts and circumstances as above related and involved in the criminal charges of simple burglary and public bribery, which charge of receiving stolen things is coming up for hearing on a motion of autrefois acquit on May 6, 1959.

s/ DALTON J. HOWARD
Affiant

SWORN TO AND SUBSCRIBED BEFORE ME ON THE DATE FIRST ABOVE MENTIONED.

s/ J. MINOS SIMON
Notary Public

Affidavit

STATE OF LOUISIANA
PARISH OF LAFAYETTE

BE IT KNOWN, That on this 7th day of April, 1959, before me undersigned Notary Public duly commissioned and qualified as such in and for the parish and state aforesaid, personally came and appeared FELTON ARCENEAUX, who being my me first duly sworn did depose and say :

That he is a man of color, aged 29 years, married and residing in the City of Lafayette, Louisiana, and that he is the brother-in-law of Dalton Howard and that he has had read to him the affidavits executed by Dalton Howard on April 7, 1959, before J. Minos Simon, Notary Public, and he states that in all particulars regarding the borrowing of his pick-up truck by Dalton Howard, the damage to said truck, the cost for repair of said truck and other particulars relating thereto as set out in the statement of the said Dalton Howard are true and correct and that he has so testified to the same under oath during the simple burglary trial of the said Dalton Howard.

his
FELTON × ARCENEAUX
mark

SWORN TO AND SUBSCRIBED BEFORE ME ON THE 7TH DAY OF APRIL, 1959, AT LAFAYETTE, LOUISIANA.

s/ J. MINOS SIMON
Notary Public

UNITED STATES OF AMERICA
STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

New Orleans, Monday, June 1, 1959

Court was duly opened, pursuant to adjournment. Present Their Honors: John B. Fournet, Chief Justice, Amos Lee Ponder, Joe B. Hamiter, Frank W. Hawthorne, E. Howard McCaleb, James D. Simon and Walter B. Hamlin, Associate Justices.

Action by the Court on Applications for Rehearing

* * * * * * * * * *

Rehearings were refused in the following cases:

* * * * * * * * * *

44,258 STATE OF LOUISIANA v. DALTON HOWARD

* * * * * * * * * *

I, HUGH ST. PAUL, Deputy Clerk, Supreme Court of Louisiana, do hereby certify the above to be a true and correct extract from the minutes of this court.

IN WITNESS, WHEREOF, I hereunto sign my name and affix the seal of the court aforesaid, at the City of New Orleans, this the 31st day of July, A. D., 1959.

s HUGH ST. PAUL
Deputy Clerk, Supreme Court of Louisiana

[SEAL]

UNITED STATES OF AMERICA

STATE OF LOUISIANA

SUPREME COURT OF THE STATE OF LOUISIANA

I, HUGH ST. PAUL, Deputy Clerk, Supreme Court of Louisiana, do hereby certify that the attached are true and correct copies of the following documents filed in the case entitled State of Louisiana v. Dalton Howard, bearing number 44,258 on the docket of this court, and number 12,386 on the docket of the Fifteenth Judicial District Court, Parish of Lafayette:

1. Duplicate copy of the transcript of appeal to the Supreme Court of Louisiana.
2. Opinion of the Supreme Court of Louisiana.
3. Application for Rehearing.
4. Supplemental Application for Rehearing.
5. Extract from the Minutes of this Court showing the Refusal of the Application for Rehearing.

IN WITNESS WHEREOF, I hereunto sign my name and affix the seal of the court aforesaid, at the City of New Orleans, this the 31st day of July, A. D., 1959.

s HUGH ST. PAUL

Deputy Clerk, Supreme Court of Louisiana

[SEAL]

Bill of Exception No. 2 (R. 58)

Filed May 23, 1958

FIFTEENTH JUDICIAL DISTRICT COURT

CRIMINAL DOCKET NO. 12,386

PARISH OF LAFAYETTE, LOUISIANA

STATE OF LOUISIANA

VS.

DALTON HOWARD

BILL OF EXCEPTION NO. 2

BE IT REMEMBERED that on the 8th day of May, 1958, in the trial of the above entitled cause, Mrs. Carolyn D. Walker, called to the witness stand by the defense and having identified herself as Chief Deputy Clerk of Court and after having identified a criminal docket record No. 12004, "State of Louisiana v. Floyd Jos. Andrews, Alias James Lewis, Norris Gabriel, Wilfred Elias, Sr., Paul Lewis, Dalton Howard, & Hammond Mitchell; Charge: Simple Burglary," she was asked the following question:

BY MR. SAVOIE:

Q. What disposition was made of the charge lodged therein as far as the accused is concerned, Dalton Howard?

MR. DEBLANC: To which question the State objects on the ground that the question calls for immaterial and irrelevant evidence.

THE COURT: Sustain the objection.

BY MR. SAVOIE: To which ruling of the Court counsel for defendant objects and reserves a bill of exception making the question, the objection of the state, the ruling of the Court part thereof on the ground that the evidence

elicited of this witness is part of the records of this Court which are in custody of the witness so called.

I, JOHN R. MOUTON, Official Court Reporter, do hereby certify that the above and foregoing single page was all the evidence adduced relative to this particular bill of exception this 8th day of May, 1958.

s/ JOHN R. MOUTON
Official Court Reporter
Filed: 5-23-58

s/ CAROLYN D. WALKER
Dy. Clk. of Ct.

(R. 59) The court is of the opinion that one can be charged with several charges out of the crime. An acquittal on another crime is irrelevant.

s/ A. WILMOT DALFERES
Judge

Filed This 25 day of June, 1958
s/ MARGUERITE W. PRIMEAUX
Dy. Clerk of Court

Excerpts from the Constitution and Statutes of the State of Louisiana

LA. CONSTITUTION, 1921;

Article 1, sec. 9:

• • • nor shall any person be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial, or a motion in arrest of judgment is sustained.

LA. REVISED STATUTES, 1950:

Title 15, sec. 77:

All persons arrested shall, from the moment of their arrest, be entitled to confer with counsel and shall not be placed in solitary confinement in any jail or precinct station and denied the right to confer with counsel.

Title 15, sec. 142:

The accused in every instance shall have the right to defend himself and to have the assistance of counsel, who shall have free access to him at all reasonable hours.

Title 15, sec. 143:

Whenever an accused charged with a felony shall make affidavit that he is unable to procure or employ counsel learned in the law, the Court before whom he shall be tried, or some judge thereof, shall immediately assign to him such counsel; provided, that if the accused is charged with a capital offense, the Court shall assign counsel for his defense of at least 5 years actual experience at the bar.

Title 15, sec. 274:

No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial, or where there shall have been a mistrial, or a motion in arrest of judgment shall have been sustained.

Title 15, sec. 281:

The plea of a former acquittal or a former conviction shall be urged, tried and disposed of before trial on the plea of guilty. (sic)

Title 15, sec. 284:

Every objection to any indictment shall be taken by demurrer or by motion to quash such indictment, before the arraignment; and every court before which any such objection shall be taken for any formal defect, may, if it be thought necessary, cause the indictment to be forthwith amended in such particular, and thereupon the trial shall proceed as if no defect had appeared.